IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CR No.185 of 2006

Decided on:December 26, 2006

Anand Kuthiala & Ors. **.....Petitioners.**

VERSUS

Chirri Devi & Anr. **.....Respondents.**

Coram

The Hon'ble Mr. Justice V.K. Gupta, Chief Justice.

Whether approved for reporting?[1]

For the Petitioners: **Mr.J.K.Rajta, Advocate.**

For Respondents:

V.K. Gupta, Chief Justice (Oral)

Record has been received which I have carefully perused. The revision petitioners had filed an eviction petition under Section 14 of the H.P. Urban Rent Control Act, 1987 on two grounds. The first ground related to the arrears of rent and the second about re-building of the rented premises. Para-18 of the eviction petition relating to the grounds on which the eviction of the respondents was sought clearly averred that the respondents had not paid rent of the premises @ Rs.20 per month since November 1993. This averment was contained in Clause (i) of Para-18(a) of the eviction petition. In Clause (ii) of Para-18(a) it was averred by the revision petitioners that the building was very old and had outlived its age etc. etc. and thus

---

[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

required re-building etc. etc. In the reply filed by the respondents before the Rent Controller insofar as the aforesaid two grounds contained in Para-18(a) of the eviction petition are concerned, they simply offered “no comments”. The learned Rent Controller on the assumption that the respondents had not contested the grounds of eviction because they had offered “no comments” with respect thereto, without framing any issue allowed the eviction petition vide her judgment and order dated 21.1.2006 only on the ground of the aforesaid “admission” made by the respondents. This eviction order was challenged by the respondents before the learned appellate Authority (Additional District Judge) Shimla in Rent Appeal No.12-S/13(b) of 2006. Vide the impugned judgment dated 27th September, 2006 the learned appellate Authority allowed the appeal filed by the respondents on the main ground, rather the only ground that before the disposal of the eviction petition on 21.1.2006 the respondents had filed an application on 20.1.2006 for amendment of the reply in terms of Order 6 Rule 17 C.P.C. because respondents in the amendment application had contended that the expression “no comments” used by them with respect to Para-18 of the eviction petition was a typing mistake and that actually the respondents wanted to contest Para-18 of the eviction petition by offering a detailed reply with respect to the grounds of eviction contained in Clauses (i) and (ii) of Para-18(a) of the eviction petition. The learned appellate Authority accordingly vide the aforesaid impugned judgment allowed the amendment application

of the respondents and in the ultimate analysis passed a final order sending the case back to the learned Rent Controller with directions to her for fresh trial and decision in accordance with law. It is against this judgment that the petitioners / landlords have filed this revision petition under Section 24(5) of the 1987 Act.

2. A perusal of the record does show that on 20.1.2006 the respondents had filed an application under Order 6 Rule 17 read with Section 151 C.P.C. seeking amendment of the reply with respect to the aforesaid grounds of eviction contained in Clauses (i) and (ii) of Para-18(a) of the eviction petition. Without inviting any reply to the said amendment application from the petitioners, the learned Rent Controller (4) Shimla by passing an order on 21.1.2006 rejected the said application. The order dated 21.1.2006 is reproduced hereunder for ready reference. It reads thus:-

> "….As regard the application under Order 6 Rule 17 C.P.C. for amending the reply, in view of the above discussion the same is not maintainable and accordingly dismissed. Be tagged with the main …."

3. A bare look at the aforesaid order leaves me with no manner of doubt that the learned Rent Controller passed the rejection order in a very slip shod manner and apparently in hot haste. An amendment application of the tenants / respondents which went to the very root of the case was dealt with cursorily as well as casually and apparently without any regard to the niceties of law. The learned Rent Controller did not even bother to invite the reply to this

application from the opposite parties. Here was a situation where the tenants / respondents contended that the expression “no comments” used by them was a result of the typing mistake and that in fact they were neither in arrears of rent nor did the building require any re-construction because it was in a good condition. Whether these two grounds of defence were proper or not or were tenable or not was a different matter altogether but the tenants / respondents at least had a right of contesting the grounds of eviction by putting up a spirited defence with respect thereto. Rather than allowing this application for amendment, of course after going through the mechanism of inviting reply thereto from the petitioners / landlords the learned Rent Controller, as noticed above in a slip shod and mechanical manner as well as by adopting a callous and casual approach wrongly rejected the application for amendment. The learned appellate Authority by correct appreciation of the facts and also by correctly applying the law on the subject has allowed the application for amendment. The natural corollary of allowing the application for amendment is to have the eviction petition re-tried and that can be done only at the level of Rent Controller because the Rent Controller has now to frame issues after the amended reply is actually filed by the respondents. After the issues are framed, thereafter the parties have to be asked to lead evidence and thereafter the eviction petition can be disposed of on its merits. The impugned order is thus wholly unassailable.

4. For the foregoing reasons, I find that this petition has no merit and it is dismissed in limine. Record be sent back.

December 26, 2006 **(V.K. Gupta)**
(soni) **Chief Justice.**